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If you have a very low income, your local legal services office may be able to help you. To get in touch with them, call the Legal Assistance Telephone Intake Service for a referral at 744-9430 in Columbia or toll free (888)346-5592 from other places in the state.

South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low-income people in South Carolina to effect systematic change by acting in and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training, and co-counseling. To find out more about SCALJC, go to www.scjustice.org on the Internet. This brochure and others can also be found online by clicking on "Brochures."

SOUTH CAROLINA appleseed LEGAL JUSTICE CENTER

PROTECTING YOUR HOME:

SOUTH CAROLINA'S PREDATORY LENDING LAWS

On January 1, 2004 South Carolina's new law to protect Homeowners will be in place. The Consumer and High Cost Home Loan Act gives consumers new rights to protect their homes.

What is a Consumer Home Loan?

A Consumer Home Loan is money you borrow using your home for collateral when the loan is for personal use. A Consumer Home Loan can be used to buy your home or for refinancing (renewing) an old loan. A loan is not a Consumer Home Loan if you use your house for collateral to borrow money for your business.

Does this law protect First Mortgages?

Yes. A consumer home loan can be a first or second mortgage in an amount under $322,000.00. The interest rate can be low or high. This new law only protects consumers who have mortgages made after January 1, 2004.

What protections will I have for my Consumer Home Loan?

1. The lender cannot "**flip**" your loan. **Flipping** only happens with a loan that is refinanced. A loan is **flipped** if it is made within 42 months of your last loan and you did not receive some type of meaningful benefit from the new loan. A meaningful benefit will be decided on a case by case basis.

Examples of a meaningful benefit are: an interest rate that is much lower, a payment that is lowered or you received an amount of cash that is a good deal more than the cost of the loan.

2. A lender cannot finance Credit or Debt Cancellation insurance after January 1, 2005. This is insurance you can buy to pay your loan if you are disabled or die. It can be very expensive, especially when it is financed.

3. A lender cannot encourage you to not pay your loan.

4. A lender cannot include a pre-payment penalty for loans of $150,000.00 or less. A **pre-payment penalty** is money you will be charged if you pay off your loan sooner than it is due. This can happen when you refinance your loan.

What is a High Cost Home Loan?

A High Cost Mortgage Loan is a home loan with a very high interest rate or one that has a large amount of costs you must pay when you take out the loan. Under the new law, High Cost Loans have extra protections.

How do I know if my Mortgage is High Cost?

There are two tests under the law to see if a mortgage is high cost. You can find this information on the closing statements that are prepared by your lender. If the mortgage meets or goes over either, then it is a High Cost Mortgage.

1. The first test has to do with the interest rate being charged. If a first mortgage is 8% or a second mortgage is 10% over what the government is charging for treasury bonds, then the loan will be high cost. This rate will be different depending on when your loan was made. In addition, if you buy a mobile home that does not include land, your loan will be high cost if the interest rate is more than 10% of treasury bonds. This rate can be checked with the Federal Reserve Board.

2. The second threshold test for whether your loan is High Cost is how much money you were charged in fees and points. If certain fees and points are more that 5% for a loan over $20,000 or 8% for loans less than $20,000, then the loan will be considered high cost. For mobile homes without land, it will be a high cost loan if the fees and points are more than 3% of the amount of the loan.

What Fees and Points Make a Loan High Cost?

As a rule of thumb, the loan costs that go into the Lender's or Mortgage Broker's pocket are what make a loan high cost. Origination fees, most discount fees, most charges for pre-payment penalties, underwriting fees, Mortgage Broker fees, preparation and application fees all go into the high cost threshold. In addition, from January 1, 2004 through January 1, 2005, all fees for Single Premium Credit Insurance and Debt Cancellation insurance are also included in the threshold.

Fees paid to a third party, such as appraisal fees, attorney's fees, real estate commissions, taxes and insurance are excluded.

As you can see, the money the Lender or Mortgage Broker earns from the loan goes into making a loan high cost. Yield Spread Premiums are not included.

What is a Yield Spread Premium?

Sometimes a Lender or Broker will put a consumer into a loan at an interest rate higher than the consumer qualifies. For example, consumer qualifies for a 6% loan, but is given a 7.5% rate. The money earned on the higher interest over 30 years can be thousands of dollars. The Lender may then pay the broker money or Yield Spread Premium (YSP) to reward the Broker for the extra money the lender will make on the loan. Mortgage Brokers will now have to show this YSP on a form that is given to the consumer listing all the money the Mortgage Broker made making the loan.

Do I have any extra protections if I have a High Cost Home Loan?

There are a number of extra protections you will have including:

- The lender cannot make the loan until you see a certified consumer counselor to look at your paperwork and talk to you about the loan.
- The loan cannot have a balloon payment. A balloon payment is any amount that is more than twice your monthly payment.
- The lender cannot finance, directly or indirectly, more than 2.5% in points and fees.
- If the lender is renewing its own loan, you cannot be charged any points and fees.
- If you are getting the loan to make home improvements, the check must be made out to both you and the person fixing your home, or put with a third party so that you can decide when the contractor gets paid.

What happens if my Mortgage Broker or Lender violates either of these new laws?

Then he or she will be responsible for a penalty up to $7,500.00. In addition, the judge can change your contract to take out the parts of the loan that break the law. This can include a no interest loan. If you must hire an attorney, the Lender or Mortgage Broker will have to pay those fees.

Do I have any additional protections if my loan is made by a Mortgage Broker?

Yes. Under the law, a Mortgage Broker will now be acting as your agent and must treat you honestly and work in your best interest. In addition, a Broker must give you two forms. One form must explain to you exactly what the Mortgage Broker will earn by making you the loan. The second form tells you how to make a complaint about your loan to a state or federal agency.